IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.949 OF 2004

Shivaji Maruti Patil .. Appellant
(Orig. Plaintiff)

Versus

1. Ramchandra Anna Patil
2. Bhagwan Daulu Patil
3. Bhimrao Daulu Patil
4. Sadashiv Daulu Patil
5. Anubai Maruti Patil
(SA is dismissed as against Respondent No.5 vide Court's order dated 17/11/2006) .. Respondents
(Orig. Defendants)

Adv. Mr.Pratap Patil for the Appellant
Adv. Mr.Bhushan Walimbe for the Respondent Nos.1 to 3

CORAM : S.R. SATHE,J.
DATED : 02/08/2007

ORAL JUDGEMENT :-

1. The Appellant-original Plaintiff in Regular Civil Suit No.308 of 1980 has preferred this appeal against the judgement and order passed by the Court of Additional District Judge, Islampur in Civil Appeal No.161 of 1999 whereby the order passed by the Joint CJJD, Islampur dismissing the Plaintiff's suit for declaration and possession was confirmed and appeal was dismissed. For the sake of convenience hereafter the parties shall be referred to as 'Plaintiff' and 'defendants'.

2. The brief facts giving rise to this appeal are as under :-

The suit property consisting of agricultural lands and house property situated at village Tandulwadi described in detail in paragraph-1 of the plaint was the ancestral property of Maruti Gopala Patil. The defendant No.6 is the wife of Maruti Gopala Patil. Maruti Gopala Patil died issue less in 1954. According to Plaintiff, as there was no possibility of Maruti having issue, he had decided to adopt Pandurang, son of Shankar Tukaram Patil who was distinctly related to Maruti. Accordingly, Maruti had told his wife. However, unfortunately, Maruti died prior to actual adoption. The defendant No.6, therefore, on 31/10/1955 adopted Pandurang after performing necessary religious ceremony for the adoption and executing the adoption deed. After adoption Pandurang was named as Shivaji and since then, he was known as Shivaji Maruti Patil (present plaintiff). Thus, as a result of the said adoption Plaintiff became the sole owner of the suit property. Defendant No.6 had no right in respect of the suit property except the right of maintenance. The defendant No.1 and father of defendant Nos. 2 to 5 namely Daulu Babaji Patil are distinct cousin of Plaintiff. Even since prior to the death of Maruti Gopala Patil the

defendant Nos. 1 to 5 were trying to get suit property. The idea of Maruti to adopt Plaintiff was not at all liked by them. However, as defendant No.6 adopted Plaintiff, Defendant Nos. 1 to 5 had a grudge against the defendant No.6.

3. The defendant No.1 to 5 falsely involved Plaintiff's natural father Shankar Tukaram Patil in one murder case. When defendant No.6 was ill, the defendant Nos.1 to 5 threatened her, made a false representation to her and tried to drive her out of the house. Hence, Plaintiff started residing at his mother's maiden home at Kinighunaki. When defendant No.6 was ill by playing fraud on her defendant No.1 to 5 got executed sale deed dated 25/09/1957 in respect of the suit property described in para-1A of the plaint and the sale deed of rest of the suit property by getting Sale Deed dated 17/09/1964 executed. According to Plaintiff, after he was adopted by defendant No.6, she had in fact no right to sell suit property and the Sale Deed obtained from her was by fraud.

4. In September-October, 1979, when the defendant Nos. 1 to 5 started getting their names entered to the suit property, plaintiff came to know about the sale

deeds mentioned above. Hence, Plaintiff filed suit for declaration that the sale deed dated 25/09/1957 and 17/09/1964 are void and alternatively also prayed that in case it is held that defendant Nos. 1 to 5 are in possession of the suit property, they be directed to hand over the same to Plaintiff.

5. The defendant No.6 filed her written statement at Exh-17 and supported the claim of Plaintiff.

6. The defendant Nos. 1 and 5 filed their Written Statement at Exh-18 and admitted that Maruti Gopala Patil died issue less. They, however, denied the allegation that Maruti Gopala Patil had decided to take plaintiff in adoption and that defendant No.6 actually adopted Plaintiff on 31/10/1955. They also denied the allegation that two sale deeds mentioned above were got executed by them by playing fraud upon defendant No.6. They also denied that the Plaintiff came to know about the said sale deeds when defendant made an attempt to get their names entered. The defendants further contended that Plaintiff was never adopted by defendant No.6 and the defendant No.6 had in fact sold the suit property under the registered Sale Deed dated 25/09/1957 and 17/09/1964 and thus, defendant No.1 and

father of defendant Nos.2 to 5 got the possession of the suit property. They also contended that since the Sale Deed they have paid the taxes of the suit property and even defendant No.6 had given a statement in RTS proceedings that Plaintiff is not adopted by her. Thus, according to defendants, suit was barred by principle of estoppal and res-judicata.

7. The defendants also contended that Plaintiff has filed the present suit in collusion with defendant No.6 and the same is barred by law of limitation. Hence, on all these grounds the defendants prayed for the dismissal of the suit.

8. On these pleadings, the learned Trial Judge framed issues at Exh-33. In order to prove the suit claim the Plaintiff examined himself at Exh-76 and his natural father Shankar Patil at Exh-85. He also examined witness Baburao Yashwant Patil at Exh-94 and defendant No.6 Anusaya Patil at Exh-95. As against this, on behalf of defendant Nos.1 to 5 Sadashiv Daulu Patil i.e. defendant No.5 was examined at Exh-97. Both the parties produced certain documents. After considering the evidence adduced by both the parties, the learned Trial Judge came to the conclusion that

Plaintiff has proved that he was adopted by defendant No.6. The trial Court, however, held that the Plaintiff has failed to prove that Sale Deeds dated 25/09/1957 and 17/09/1964 was got executed by playing fraud upon defendant No.6. He also held that Plaintiff's suit was barred by law of limitation. Hence, the Trial Court dismissed the Plaintiff's suit.

9. Being aggrieved by the same, Plaintiff filed Civil Appeal in the Court of Additional District Judge, Islampur. The learned Additional District Judge held that Plaintiff has failed to prove the alleged adoption and that Sale Deed was got executed by practicing fraud upon defendant No.6. Under the circumstances, he held that issue with regard to limitation was redundant and Plaintiff is not entitled to get decree as prayed. He, therefore, dismissed the appeal.

10. The above mentioned order is challenged by the Plaintiff in the present Second Appeal. From the perusal of the record it appears that when the matter was placed for admission, this Court *(CORAM : S.B. DESHMUKH, J.)* passed the following order :-

> *"4. After hearing the learned Counsel for the appellant, in my view, the*

respondents can be put to notice on two grounds, which are reproduced hereinbelow:-

(1) Whether the Lower Appellate Court is justified in concluding that the appellant (original plaintiff) is not adoptive son of respondent No.5 (original defendant No.6) by discarding evidence in the form of certified copy of registered adoption deed, photograph of adoption, deposition of independent eye-witness and deposition of adoptive mother ?

(2) Whether the First Appellate Court is justified in holding that question of law i.e. filing of the suit within the period of limitation is redundant, in view of the fact situation that the trial Court on appreciation of the evidence recorded a finding on point of limitation ?"

11. Shri Pratap Patil, learned Advocate for the Appellant has urged two points before me. Firstly, he submitted that the learned First Appellate Court has not properly appreciated the evidence on record and has wrongly discarded the copy of registered adoption deed

and the oral evidence led by the Plaintiff. Secondly, he canvassed before me that the suit filed by the Plaintiff was in time. So, instead of saying that the point with regard to limitation has become redundant, the learned Additional District Judge ought to have said that the suit is in time. He, therefore, submitted that the appeal be allowed and the suit be decreed in Plaintiff's favour. As against this, Shri Walimbe, learned Advocate for the Respondents-original defendant Nos. 1 to 5 supported the judgement and order passed by the learned Additional District Judge.

12. It is not in dispute that Maruti Gopala Patil the original owner of the suit property died issueless in the year 1954 leaving behind his wife Anubai i.e. defendant No.6. It is the case of Plaintiff that when he was about 3 ½ to 4 years of age he was given in adoption to defendant No.6 and accordingly, adoption deed was also executed after necessary ceremony regarding adoption took place. However, defendant Nos. 1 to 5 have contended that no such adoption as alleged by the Plaintiff has taken place. According to them, natural father of Plaintiff namely Shankar Tukaram Patil had in fact tried to give Plaintiff in adoption to defendant No.6 Anubai with a view to grab the

property of late Maruti Gopala Patil. As against this, it is alleged by the Plaintiff that defendant Nos. 1 to 5 were in fact trying to give the son of defendant No.2 to Anubai in adoption. In the present suit, Plaintiff is seeking declaration that the sale deed executed by defendant No.6 in favour of defendant Nos. 1 to 5 are after the adoption and as such, the same are illegal. The said Sale Deeds are dated 25/09/1957 and 17/09/1964. It is the case of the Plaintiff that he was given in adoption on 31/10/1955. It is needless to say that when Plaintiff has based his suit on the allegation that he is adopted son of the defendant and fate of the suit depends on the adoption then in such a case the burden lies upon Plaintiff to prove factum of adoption and its validity. It is also observed by the Apex Court in **Madhusudan Das Versus Narayani Bai AIR 1983 SUPREME COURT 114** that the evidence in proof of the adoption should be free from all suspicion of fraud and so consistent and probable as to give no occasion for doubting its truth, though of course, the factum of adoption must be proved in the same way as any other fact. So, bearing in mind this position of law we have to scan the evidence on record and find out whether the finding of fact recorded by the learned Additional District Judge that the Plaintiff has failed to prove

the alleged adoption needs to be set aside.

13. In order to prove his case, Plaintiff has examined himself at Exh-76 and three other witnesses namely his natural father Shankar Tukaram Patil Exh-85, witness Baburao Patil Exh-94, defendant No.6 Anusaya Maruti Patil, adoptive mother Exh-95. As against this, on behalf of defendant Sadashiv Daulu Patil original defendant No.5 has examined at Exh-97. Both the parties produced certain documents. So far as Plaintiff Shivaji Patil is concerned, he has stated that when he was about 3 ½ years of age he was given in adoption. So, one thing is certain that his evidence is of no use to prove the actual adoption or circumstances under which the alleged adoption took place.

14. Much reliance has placed on the evidence of Plaintiff's natural father namely Shankar Tukaram Patil Exh-85. He has stated that after the death of Maruti Gopala Patil, defendant No.6 asked him to give his son in adoption and he agreed for the same and then the adoption ceremony took place at Uran. Even photograph was also taken at the time of the said ceremony. Then deed of adoption was executed. However, it must be noted that neither Plaintiff nor his witness have

produced the original adoption deed. It is true that the Plaintiff had produced certified copy of the registered adoption deed. However, merely because such copy was produced one can not jump to the conclusion that the said production by itself was sufficient to prove the alleged adoption. It is needless to say that it was bounden duty of the Plaintiff to produce the original adoption deed when according to him the said deed was executed, because that was the primary evidence. However, the Plaintiff has failed to produce the said document. Not only that but he also failed to bring on record the circumstances under which he could not produce the primary evidence. But it appears that as Plaintiff failed to make out a case for production of secondary evidence, document which was produced by the Plaintiff has not been admitted in evidence. Under the circumstances of the case, it can not be said that the trial court or First Appellate Court have wrongly ignored the said document.

15. Much is made about the fact that the Plaintiff has produced one photograph of the alleged adoption ceremony. But we find that he has not examined the photographer who took the photograph. Nor he has produced negative of the said photograph. The Plaintiff

also failed to justify as to why he did not examine the photographer and produce the negative. So, under such circumstances, the learned Additional District Judge did not give any importance to the said photograph and the oral evidence adduced by Baburao Patil Exh-94 who obviously appeared to be highly interested witnesses.

16. On the above mentioned background, if we take into consideration other evidence which has been adduced by the defendant it creates grave doubt about the genuineness of the alleged adoption. It is needless to say that normally the objects of adoption are twofold : the first is religious to secure spiritual benefit to the adopter and his ancestors by having a son for the purpose of offering funeral cakes and libations of waters. The second is secular, to secure an heir and perpetuate the adopter's name. There is also other object namely possibility of devolution of property. In the instant case, PW-2 Shankar Tukaram Patil and PW-4 Anusaya Patil have stated that after adoption Plaintiff started naming himself as Shivaji Maruti Patil instead of Pandurang Shankar Patil. However, merely because Plaintiff was introducing himself accordingly that by itself is not sufficient to jump to the conclusion that there was valid adoption.

In the instant case, it appears that right from the beginning the defendant Nos. 1 to 5 had contended that Shankar Patil was forcibly trying to give his son in adoption to Anubai with a view to grab her husband's property. Not only that, but we find that complaint to that effect was in fact filed and in the said Criminal Case even the present defendant No.6 who is alleging that Plaintiff was taken in adoption by her had in fact stated that he was not adopted by her. The defendant Nos. 1 to 5 have produced on record the judgement of Criminal Case No.37/1956 filed in the Court of JMFC, Islampur wherein PW-2 Shankar Patil was charged alongwith others for the offences punishable under sections 365, 347 r/w. 34 of IPC. It is true that in that case he was acquitted. However, from the judgement which is produced on record it does appear that in that case the present defendant No.6 had in fact, supported the prosecution and stated that she was forcibly taken by accused. So, in that case, Anusaya had in fact stated that force was used in the alleged adoption.

17. There is another important piece of evidence which also lends support to the defendants' version and creates doubt about the theory of adoption. Defendant had produced at Exh-71. The record from the Tahsil

office where inquiry was held about the entering names of defendant Nos.1 to 5 to the suit property. In that inquiry also, Anusaya Maruti Patil had stated that present Plaintiff was not adopted by her. Even in the order passed by the Tahsildar, Walava he has specifically mentioned that Anusaya Patil denied the alleged adoption. This order is dated 29/10/1968. So, this evidence also shows that it is not safe to accept the bear words of Plaintiff and his witnesses to hold that Plaintiff was in fact taken in adoption by defendant No.6.

18. Inconsistent stand taken by the adoptive mother from time to time creates grave doubt about the alleged adoption.

19. There is another very important circumstance which also lends support to the version of the defendant Nos. 1 to 5 that adoption had not taken place. Normally, after adoption adopted child would start residing with the adopted mother. However, in the instant case, admittedly, even after adoption adopted child namely Pandurang did not reside with defendant No.6. He continued to stay in the house of natural father. In fact, after adoption his natural father had

ceased to be his natural guardian. Even then we find that after adoption for several years minor Shivaji Maruti Patil was shown to be under guardianship of his natural father and the transactions which were made in the name of minor were also through Shankar Patil and he was shown as minor's guardian. This was also very strange. No justifiable evidence in that behalf is adduced by the Plaintiff.

20. If really adoption had taken place as now alleged by the defendant No.6 and it was really genuine adoption then certainly adoptive mother would not have disposed of the property, which as a result of adoption had become the property of Plaintiff. The very fact that even after the alleged adoption defendant No.6 entered into two sale transactions with defendant Nos. 1 to 5 stating therein that she is the owner of the property, also shows that no adoption had in fact taken place. Even if it is assumed that any document in that behalf was executed still there is ample of evidence to show that the said document was never acted upon.

21. Thus, there are numerous circumstances on record which create grave doubt about the Plaintiff's version. So, I am of the considered view that the

learned Additional District Judge has rightly held that the Plaintiff has failed to prove the alleged adoption.

22. It is the case of the Plaintiff that the sale deeds executed by the defendant No.6 are illegal and void because according to Plaintiff when she executed the said sale deed as a result of the adoption the Plaintiff had acquired right, title and interest in the said property. It must be noted that even if we accept the Plaintiff's evidence as it is, it is clear that when he filed the present suit, he was about 27 or 28 years of age. So, if we take into consideration the period of limitation prescribed for obtaining declaration that adoption is valid still then, the present suit is barred by law of limitation. Admittedly, the sale deeds executed by defendant No.6 in favour of defendant Nos. 1 to 5 are of the year 1957 and 1964 so, Plaintiff ought to have filed suit to challenge the said sale deeds at least within 3 years after the time Plaintiff became major but that has also not happened. So, looking to the suit from any angle it is barred by law of limitation.

23. From the perusal of the judgement of the First Appellate Court, it appears that the learned Additional

District Judge has appreciated the evidence in its proper perspective and rightly dismissed the Plaintiff's suit. There is no need to interfere with the said order.

24. In this view of the matter there is no substance in this appeal. Hence, I pass the following order:-

O R D E R

Appeal is dismissed with costs.

(S.R. SATHE, J.)